

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CALVIN GAGE,

Plaintiff,

V.

MICHIGAN DEPARTMENT OF HEALTH
AND HUMAN SERVICES ET AL.,

Defendants.

No. 1:22-cv-01206

Hon. Paul L. Maloney

ORDER REJECTING AND RETURNING R&R

Plaintiff Calvin Gage commenced this action in the Kalamazoo County Circuit Court on August 11, 2022, and Defendants removed the action to this Court. In his amended complaint, Plaintiff brought four claims: (1) wrongful discharge in violation of public policy under Michigan law; (2) violation of the anti-retaliation provision of the False Claims Act (“FCA”), 31 U.S.C. § 3730(h)(1); (3) retaliation in violation of the First Amendment; and (4) retaliation in violation of Article I of the Michigan Constitution. (ECF No. 1-1). Judge Berens issued a Report and Recommendation (“R&R”) granting in part and denying in part Defendants’ motion to dismiss. (ECF No. 7).

Under Federal Rule of Civil Procedure 72(b)(2), a district judge may return a report and recommendation to the magistrate judge with instructions. The Court returns this case to the Magistrate without expressing a decision on the merits. The

R&R concluded that Defendants procedurally waived their argument regarding waiver of immunity upon removal; that was erroneous. The Magistrate shall address Defendants' immunity argument regarding *Lapides v. Board of Regents of University System of Georgia*, 553 U.S. 613 (2002). Additionally, the Magistrate shall address Plaintiff's pending motion for leave to file a second amended complaint. (ECF No. 9).

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 7) issued by the Magistrate is **REJECTED** and **RETURNED** for further consideration.

IT IS FURTHER ORDERED that Plaintiff's motion for leave to file a second amended complaint (ECF No. 9) is referred to the Magistrate.

IT IS SO ORDERED.

Date: October 2, 2023

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge